

RECEIVED
CENTRAL FAX CENTER

JUN 23 2006

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Application No.: 10/809,034

§
§
§
§
§
§
§

Docket No. PUS-P001-041

Filing Date: 03/25/2004

Title: LOCKING BONE
PLATEInventor(s): YOUNG, Robert Allen,
WHITE, Patrick Michel, and
KHOWAYLO, Mike

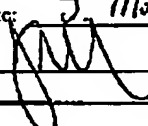
Assignee: Precimed S.A.

CERTIFICATE OF TRANSMISSION UNDER 37 CFR §1.8. I hereby certify that this correspondence is being
facsimile transmitted to the Patent and Trademark OfficeOn June 23, 2006

Typed or printed name of person signing this certificate:

J. Moettel.

Signature of person signing this certificate:

PETITION TO MAKE SPECIAL UNDER 37 CFR §1.102
ON OTHER GROUNDSVia facsimile to 001-703-746-4060* OIPE
001-571-273-8300:Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

Applicant petitions the Commissioner to make special the above-identified
application on the grounds of Actual Infringement.

In support thereof, Applicant states that:

- (1) There is a competing device or product actually on the market which, should
Applicant's claims be granted in their current scope, would infringe at least claim
1 of Applicant's application (see Exhibit A);

1

- (2) A rigid comparison of the alleged infringing device with the claims of the application has been made, and that, in Applicant's opinion, some of the claims would be unquestionably infringed (see below comments on infringement comparison); and
- (3) Applicant has made or caused to be made a careful search of the prior art or has a good knowledge of the pertinent prior art.

Applicant attaches as **Exhibit A** a representation of the infringing product which is believed to be in actual use which Applicant invites to compare with **Exhibit B**, which is Fig. 1a of Applicant's patent application.

Infringement Comparison:

Claim one as amended in Applicant's response to the first office action is reproduced below:

1. (currently amended) A bone plate of complex form, suitable for use in osteotomy, the bone plate having a longitudinal axis, a bone-contacting bottom side and a top side with at least two complex apertures each comprised of at least one set of two overlapping holes each having multifaceted surfaces, the holes communicating through the plate from the top to the bottom side, and wherein, when applied, at least one set of two adjacent overlapping holes is located so as to lie on opposite sides of an osteotomy site and a third hole is aligned at an angle with respect to the longitudinal axis.

Placed in table form and compared with the potentially infringing product, Applicant's claim 1 requires the elements listed in the first column below, such elements all being present in the potentially infringing device:

Amended Claim 1 elements	Element present in Potentially infringing product? (Y/N)	Comments
A bone plate (80) of complex form, suitable for use in osteotomy, the bone plate having a longitudinal axis (12), a bone-contacting bottom side and a top side (90)	Y	Absolutely identical
with at least two complex apertures	Y	In this case both Applicant's invention and potential infringers product have three complex apertures
each [complex structure] comprised of at least one set of two overlapping holes	Y	Absolutely identical
each [overlapping hole] having multifaceted surfaces,	Y	Absolutely identical, each set of overlapping holes has multifaceted surfaces, i.e. the threaded surfaces in each overlapping hole
the holes communicating through the plate from the top to the bottom side,	Y	Absolutely identical
and wherein, when applied, at least one set of two adjacent overlapping holes	Y	Absolutely identical--the osteotomy site (112) is located in the same position relative to the

**RECEIVED
CENTRAL FAX CENTER**

JUN 23 2006

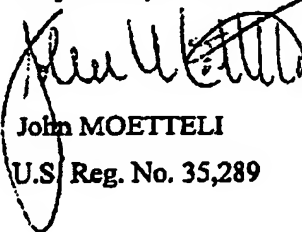
is located so as to lie on opposite sides of an osteotomy site and		two complex apertures (A and B) having overlapping holes on either side thereof.
a third hole is aligned at an angle with respect to the longitudinal axis.	Y	See hole C

As is clear from the above comparison, the potentially infringing product includes each and every element of claim 1 in its current amended form. Consequently, it is evident that should claim one be granted in its amended form, there will be infringement. Therefore, it is requested that the Office review this application out of turn, by according it special status.

This petition to make an application special on these grounds must be accompanied by the fee set forth in § 1.17(h). Therefore, the Undersigned authorizes the Commissioner to debit the deposit account of MOETTELI & Associés SARL, for the fee due under 37 CFR 1.17(i), currently published to be \$130.00. 50-2621

It is believed that Applicant has clearly demonstrated that he is entitled to special examination of the instance case. Acknowledgement of this fact is respectfully requested. If the Examiner has further questions, he is invited to contact the undersigned at phone 011-4171-230-1000 or fax at 011-4171-230-1001.

Respectfully submitted,


John MOETTELI
U.S. Reg. No. 35,289

Date: June 23, 2006

Enclosures: Exhibits A & B, mentioned